

Office of the Secretary  
Federal Trade Commission  
Room 159-H  
600 Pennsylvania Avenue NW.  
Washington D.C. 20580

February 8, 2005

Re: Children's Online Privacy Protection Rule  
Sliding Scale 2005, Project No. P054503

We respectfully submit these comments as graduate business students who examined this proposed regulation as part of our current program of academic study in the MGMT 666 Graduate Business and Medical Law Course offered by La Sierra University, Riverside, CA, (Glendale Cohort). The cohort consists of 19 MBA students, who are physicians, executives, senior managers, and health care professionals, many of whom are concerned parents. Our professor is John B. Wyatt III J.D.

We are concerned about the "permanent status" of the sliding scale mechanism and request that the Federal Trade Commission further examine the following concerns before ruling.

**1. Are secure electronic mechanisms now widely available to facilitate verifiable parental consent at a reasonable cost?**

When the commission adopted the sliding scale mechanism in 1998 as a "short-term" measure, it believed that "more reliable methods" of obtaining verifiable parental consent would soon be widely available and supportable. As the commission identified at the time of the April 21, 2002 deadline, expected progress in digital technology was slower than expected. As a result, the deadline was extended for an additional three years. As we approach the deadline in 2005, we are not convinced, based on the data provided, that the sliding scale is the best mechanism for protecting children's online privacy and parental concerns. To make permanent a mechanism that has not been examined in detail, or without fully understanding the loopholes in children's online privacy during the last three to five years, is shortsighted and without justifiable evidence.

The progress in the areas of digital signature and certificate software development has been slower than expected; it is still unclear if such technology is ready in 2005. Notwithstanding, we believe that truly secure methods of parental consent will be available in the near future. For instance, the search engine *Google*®, at the time of this writing, produced 2.25 million hits under the search topic of "digital signature technology," and 3.15 million hits under "digital certificate technology" reflecting, at a minimum, overwhelming discussion (including current and future implementation) of these relevant technologies.

Three years ago, businesses were still experimenting with this new technology and

consumers were uneducated about its uses. But today, it is more commonplace to use this technology in everyday e-commerce activities. It is fair then to make the assumption that digital technology is more available and reliable today than it was three years ago and thus now warrants further study to determine the efficacy of utilizing one method of privacy technology mechanism versus another. Has the commission re-examined this new technology in light of its advancement and current role in the e-commerce market? If not, then it would be premature to make permanent a ruling on the sliding scale mechanism when it was originally designed to be only a temporary stop gap measure, especially if more advanced technologies may now be available at a reasonable cost.

According to one article on the Internet, digital signature technology has actually been available since 1976, when Diffie and Hellman introduced the digital signature as an application of public key cryptography. In September 1998, President Bill Clinton and Irish Prime Minister Bertie Ahern digitally signed an intergovernmental e-commerce document that is the world's first document to use digital signature technology. Microsoft used digital signature technology to develop Authenticode technology in order to secure Web downloadable codes.

Submission of our comment is not whether such technologies exist today, but whether digital signature technology is the more advanced means compared to the sliding scale mechanism available to protect the online privacy rights of children. Were the commission to study the effects of the sliding scale mechanism during the last five years and compare its results in relation to more advanced technologies available, our cohort would be more likely to support a notion that digital software technology is undeveloped or only available at an unreasonable cost, especially if the research proved those outcomes. Without this level of evidence-based data, we are unable to agree favorably with the permanent use of the sliding scale mechanism as the "best mechanism" to support children's online privacy rights or to support an extension that only further delays the implementation of tougher safeguards.

## **2. Are the infomediary services now widely available to facilitate verifiable parental consent at a reasonable cost?**

The FTC's adoption of the sliding scale mechanism, with an extension to April 21, 2002 and again to April 2005, were seen as reasonable attempts to allow the online industry to have time to react to the new COPPA requirements. Additionally, it allowed the new technological solutions and infomediary services to emerge and comply with this new regulation. According to a FTC survey of children's Web sites published December 16, it was found that most sites continue to collect personally identifiable information from underage computer users despite repeated warnings. The survey found that 86 percent of the 126 child-oriented Web sites it surveyed during "Kid Privacy Surf Day" in mid-October collected personally identifiable information from children without parental consent. The FTC also found less than 30 percent of the Web sites surveyed provided an explanation of how they use information and only 4 percent of the sites required parental authorization prior to collecting information from kids.

Though it may be difficult for Web site operators to budget for higher costs to implement software services that obtain proper parental consent for both external and internal uses, any parent you ask would argue that the most important part of children's online privacy protection is the safety and security of a child's information, regardless of the cost-prohibitive measures to implement those secure measures. The Internet is an open communication network. Anybody can use the Internet and consequently, anyone can exploit its vulnerabilities for fraudulent gain. If the Internet is to be used by children, especially those under the age of 13, it requires communication tools that are the fundamentals of security and identity protection.

**3. When are secure electronic mechanisms and/or infomediary services for obtaining verifiable parental consent anticipated to become available at a reasonable cost? To what extent would the commission's decision to eliminate, make permanent, or extend the sliding scale mechanism affect the incentive to develop and deploy these means of obtaining verifiable parental consent?**

To answer the first part of this question is to assume that electronic mechanisms and/or infomediary services for obtaining verifiable parental consent are not currently available. Given that the previous comments have already addressed this issue and we do not agree with the notion that mechanisms are not available, we request that the FTC examine current electronic mechanism and infomediary services. It would also be helpful if the FTC addressed the issue of reasonable costs and made those figures available to the public.

The commission's decision to extend the sliding scale mechanism will affect those Web site operators that have complied with the FTC's ruling and have made a decent attempt at compliance in anticipation of a final ruling in favor of a more advanced technology. To make the sliding scale permanent could negatively impact those businesses in the process of, or completion of, developing digital software technology because the Web site operators were anticipating a ruling that would support the original proposal as outlined in COPPA. Eliminating the sliding scale may facilitate an accelerated development process for digital signature technology and hold the FTC to a higher standard of enforcement. Additionally, it would require Web site operators to comply and be accountable in upholding a child's online privacy protection rights.

**4. What effect would eliminating the sliding scale have on the information collection and use of practices of Web site operators? For example, would the elimination of the sliding scale mechanism encourage Web site operators to collect children's personal information for uses other than the operators' own internal use because the cost of obtaining parental consent would be the same for internal as well as external users?**

We are not advocating the elimination of the sliding scale mechanism altogether. Our issue is with the "permanent status" as put forth in this request for comments. If the elimination of the sliding scale mechanism were to result in no privacy measures or

assurances for children's online privacy, we would support a limited extension (no more than 12 months) until more advanced technologies can be implemented. The commission has had ample time and two previous extensions to get this right. To extend that time again seems to jeopardize the online privacy of children and technologies that support those measures. We believe that were the commission to ask most parents to choose between savvy software technologies, which promote or implement their e-commerce Internet activities, and software that protects the privacy and identification of children, that the **overwhelming majority of parental responses would favor the spending of money, time, and continued development of mechanisms to protect children.** If the e-commerce market can afford to implement these measures, then surely Congress and the Federal Trade Commission are able to likewise do so by enacting a ruling so as to protect children and thus hold Web site operators to the strictest standards.

The key provisions of the original ruling applied to operators of commercial Web sites and online services directed to children (under 13) and general audience sites that are collecting personal information from children. It indicated that Web site operators 1) provide parents notice of their information practices 2) obtain verifiable parental consent before collecting a child's personal information, with certain limited exceptions 3) give parents a choice as to whether their child's information will be disclosed to third parties 4) provide parents access to their child's personal information and allow them to review it and/or have it deleted 5) give parents the opportunity to prevent further use or collection of information and 6) not require a child to provide more information than is reasonably necessary to participate in an activity, and maintain the confidentiality, security, and provisions of the original ruling and the use of the sliding scale mechanism as a good intermediate measure to enforce the compliance by Web site operators. However, the sliding scale mechanism has not been completely effective, as indicated by the FTC's own study of Web site operators. The decision to rule in favor of permanent status is, at best, premature at this time.

We support the key provisions put forth in this ruling and anticipate that the question regarding the use of the sliding scale mechanism would result in one of only two answers. Either (1) extend the use of the sliding scale mechanism and put the advancement towards newer technologies on the front burner for the next 12 months or (2) eliminate the sliding scale mechanism altogether in lieu of newer technologies that are available for immediate implementation.

#### **5. Is there any evidence that the sliding scale mechanism is being misused or not working effectively?**

Congress and the commission wisely developed COPPA as a reasonable method of securing more safety and protection for children engaged in Internet activity. The goal of the sliding scale mechanism was to be an effective temporary measure that put parental consent into the equation for a child's online activity. In lieu of no other privacy measures, the sliding scale was a step in the right direction. Given that more advanced technologies are now available, there is no data to support that the sliding scale mechanism is still effective. It is our opinion that the current research supports the

proposition that tech-savvy children know how to surf the Internet far better than many of their parents. When combined with Web site operators who are not complying with this measure, there appear to be indications of loopholes in the mechanisms in place today.

The FTC's own survey did not produce favorable results regarding the online collection of personally identifiable information from children. The FTC's survey indicates that less than 30 percent of Web sites surveyed provided an explanation of how they use information and only 4 percent of the sites required parental authorization prior to collecting information from kids. During the FTC's June workshop, an online privacy survey revealed that 73 percent of the public believed it is unacceptable for Web sites to gather personal information from children for their own use, and 90 percent believed that it is unacceptable to disclose information about children to others. Further, the online industry received a strong warning from the FTC that collecting personal information from children without parental consent may be an unfair and deceptive practice.

Children today are Internet savvy. Most know how to surf the Web to do all sorts of things. Many times they are exposed to areas of information that are sensitive and they may not fully understand the consequences of giving out personal information online. Parents may not always have the knowledge, the ability or the opportunity to intervene in their children's choices about giving out personal information. It is imperative that companies operating online protect the privacy of children.

The commission must remain vigilant and consistent to its original goals and ruling. Changing course, even if an extension produces a new "specific timeline," introduces doubt as to whether enforcement of these new provisions are truly intended or whether further extensions might be achieved down the road. Lowering the bar to unreliable methods of verifiable consent is harmful to children and the emergence of more advanced technologies. Another extension has the potential to create uncertainty and lack the necessity toward "full compliance." Additionally, another setback in the deadline may hold back the natural advancement of developing industry standards for COPPA-compliant registration.

It is for these reasons that we urge the commission to eliminate the sliding scale in lieu of newer technologies that are available for immediate implementation or extend the sliding scale for a period of no more than 12 months. We believe that the desired result of such a ruling will be to send a clear message to parents and Web site operators that the Federal Trade Commission is serious about the privacy issues surrounding children's online activities.

Thank you for the opportunity to provide this feedback. If additional information is needed, please do not hesitate to contact our professor at his e-mail address at \_\_\_\_\_, his phone number at \_\_\_\_\_ or the university address which is Professor John B. Wyatt III, School of Business and Management, La Sierra University,

Respectfully submitted.

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